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No. 06-281

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SUPREME COURT, U.S.

In the Supreme Court of the United States

EVELYN WHITE,

Petitioner,

v.

CRIME PREVENTION SECURITY SPECIALISTS and ACCIDENT FUND INSURANCE COMPANY OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Michigan

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Is there a rational basis for Michigan's statute that allows for coordination of weekly workers' compensation benefits with 50% of an injured worker's old age social security benefits?

PARTIES TO THE PROCEEDINGS

Petitioner

Evelyn White is an individual with no corporate affiliation.

Respondents

Crime Prevention Security Specialists is the employer-respondent. The Accident Fund Insurance Company of America is the workers' compensation insurance company-respondent.

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Michigan enacted a coordination of benefits provision in its workers' compensation statute to provide a savings to employers in the cost of workers' compensation insurance. The legislative purpose was to dispel the notion Michigan was an unattractive state within which to do business due to high business costs. That is a rational basis for Michigan's coordination of benefits provision. Therefore, the provision does not violate the equal protection clause. Furthermore, constitutionality of state classifications based on age cannot be determined on a person-by-person basis. 2

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BRIEF IN OPPOSITION

SUMMARY OF REASONS TO DENY THE PETITION

There is a rational basis for Michigan providing in its workers' compensation statute for coordination of weekly workers' compensation benefits with 50% of the injured worker's old age social security benefits. (The 50% amount reflects the employer's contribution to the social security system). The legislative rationale for this provision is to provide a major savings to employers in the cost of workers' compensation while maintaining adequate benefit levels for injured workers. Also, the constitutionality of Michigan's statute cannot be determined on a person-by-person basis.

STATEMENT OF THE CASE

In briefing, petitioner erroneously says, "The parties further stipulated that petitioner has continued to be disabled as a result of that [work] injury." (Petitioner's Petition for Writ of Certiorari, p 2; bracketed word added). Respondents never stipulated plaintiff was disabled (*e.g.*, Petitioner's Appendix, 13a). Second, the only Michigan statute directly at issue is MCL 418.354, known as the coordination of benefits provision of Michigan's Worker's Disability Compensation Act.[1] Previously, petitioner had experienced

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[1] MCL 418.354(1) provides in pertinent part: "This section is applicable when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 351, 361, or 835 with respect to the same time period for which old-age insurance benefit payments under the social security act, 42 U.S.C. 301 to 1397f; payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by the employer; or pension or retirement payments pursuant to a plan or

a reduction under a different offset provision of Michigan's Worker's Disability Compensation Act, MCL 418.357, but that reduction stopped prior to trial and is not at issue.

Therefore, to correctly focus the issue factually for the Court, the question is whether MCL 418.354 [the coordination of benefits provision in Michigan's workers' compensation statute] can allow for a reduction in petitioner's weekly rate of compensation by 50% of her old age social security benefits without running afoul of the equal protection clause of the federal Constitution. US Const, Am XIV, § 1.

REASONS FOR DENYING THE PETITION

Michigan enacted a coordination of benefits provision in its workers' compensation statute to provide a savings to employers in the cost of workers' compensation insurance. The legislative purpose was to dispel the notion Michigan was an unattractive state within which to do business due to high business costs. That is a rational basis for Michigan's coordination of benefits provision. Therefore, the provision does not violate the equal protection clause. Furthermore, constitutionality of state classifications based on age cannot be determined on a person-by-person basis.

The Court reviews claims of unconstitutional age discrimination under the equal protection clause pursuant to a rational basis test, *i.e.*, whether the "varying treatment of

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program established or maintained by the employer, are also received or being received by the employee. Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under section 361(2) and (3) shall be reduced by these amounts: ...."

different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational." *Kimel v. Florida Board of Regents*, 528 U.S. 62, 84; 120 S. Ct. 631 (2000). A statute that relates to an age classification "is presumptively rational, the individual challenging its constitutionality bears the burden of proving that 'the facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.'" *Kimel*, 528 U.S. at 84. Petitioner here claims the legislative purpose of Michigan's coordination of benefits statute – MCL 418.354 [§ 354], the only state statute at issue – is "irrational" because it "penalize[s] older workers by reducing their wage loss benefits compared to injured workers not receiving their old-age social security benefits." (Petitioner's Petition for Writ of Certiorari, p 8 and p 9, respectively; emphasis removed).

Michigan's coordination of benefits statute is not "irrational". The Legislature had two purposes in enacting it. The first purpose was Michigan's desire to dispel the notion that it was an unattractive state within which to do business due to high workers' compensation costs. The Michigan Supreme Court explained in *Franks v. White Pine Copper Division*, 422 Mich. 636, 655; 375 N.W.2d 715 (1985):

> Legislative analysis of § 354 by the Senate Analysis Section reiterated these concerns:
>
> Coordination of benefits has been a major concern of employers for years. Public Act 357 coordinated workers' compensation with unemployment compensation (effective January 1, 1982) [MCL 418.358; MSA 17.237(358)] but failed to address coordination with Social Security and other insurance

> and pension plans. By coordinating workers' compensation benefits with Social Security and other benefits, Senate Bill 595 would provide a major savings to employers in the cost of workers' compensation while maintaining adequate benefit levels for disabled workers.

Michigan's Legislature had a second reason for § 354 as well. The legislation is aimed at "'reduc[ing] the overlap between the various public and private wage replacement programs while ensuring adequate wage-loss benefits to injured employees.'" *Franks*, 422 Mich. at 656 (footnote omitted). A statute allowing for coordination of different income maintenance benefits in order to make the state attractive by lowering its cost of doing business, while maintaining adequate income maintenance levels to injured employees, is a legitimate aim of Michigan's Legislature.

The Michigan Supreme Court rebuffed a state constitutional challenge to this coordination of benefits provision using reasoning applicable here. The Michigan Supreme Court said:

> We may not premise our decision in these cases upon our own feelings about the wisdom of what the Legislature has done, nor any equitable concerns about the express proposes and potential effect of the enactment under consideration. [Citations omitted]. Nor is it properly part of our function to decide whether or not those things which the Legislature sought to change really constituted abuses. That the Legislature believed that it was abusive for an injured and disabled worker to receive workers' compensation benefits and benefits from certain other sources at the same time is clear. *Franks*, 422 Mich. at 658.

Other states have used similar rationales to enact statutes that reduce their workers' compensation costs. Those statutes have withstood constitutional challenges. *E.g.*, *Tobin's Case*, 424 Mass. 250; 675 N.E.2d 781 (1997) ["Because § 35E makes it more difficult for employees eligible for social security or pensions also to collect workers' compensation benefits, the burden on employers is alleviated. This also provides a rational basis for the statute." 424 Mass. at 253]; *Sasso v. Ram Property Management*, 452 So. 2d 932 (1984) ["(T)he district court found three legitimate state objectives", including "(t)o reduce the cost of workers' compensation premiums." 452 So. 2d at 934 including n 3]; see also, *Brown v. Goodyear Tire & Rubber Co*, 3 Kan. App.2d 648, 653; 599 P.2d 1031 (1979); *Edwards v. Louisville Ladder*, 957 S.W.2d 290, 296 (1997) [citing Michigan cases]; *McClanathan v. Smith*, 186 Mont. 56, 67-68; 606 P.2d 507 (1980); *Vogel v. Wells Fargo Guard Services*, 937 S.W.2d 856, 859 (1996). This Court in a related context has held that a statute limiting the receipt of two similar benefits is not constitutionally infirm under equal protection analysis. *Richardson v Belcher*, 404 U.S. 78; 92 S. Ct. 254 (1971).

Petitioner's alleged disparity of treatment results from "compar[ing]" employees who are injured after the age 65 to those injured at an age "less than age 65." (Petitioner's Petition for Writ of Certiorari, p 9 and p 10, respectively). But, the difference in treatment between these two classifications is not constitutionally invalid. Workers injured before age 65 will not be receiving old age social security benefits. Workers injured after that date may be receiving this other income maintenance benefit. Comparing workers' compensation recipients who are not also receiving old age social security benefits with those who are receiving both benefits is not a legitimate comparison. The former's

employer is not paying the injured worker two different types of benefits, while the latter is.

Petitioner also argues that because application of the statute may produce inequality to some persons, the statute must be constitutionally invalid. That is not so. *Kimel* described this Court's three preceding decisions where the Court held a state's reliance on broad generalizations, even though causing inequality in an individualized case, passes constitutional muster. *Kimel* explains:

> Our decisions in *Murgia*, *Bradley*, and *Gregory* illustrate these principles. In all three cases, we held that the States' reliance on broad generalizations with respect to age did not violate the Equal Protection Clause. In *Murgia*, we upheld against an equal protection challenge a Massachusetts statute requiring state police officers to retire at age 50. The State justified the provision on the ground that the age classification assured the State of the physical preparedness of its officers. 427 U.S., at 314-315, 96 S.Ct. 2562. Although we acknowledged that Officer Murgia himself was in excellent physical health and could still perform the duties of a state police officer, we found that the statute clearly met the requirements of the Equal Protection Clause. *Id.*, at 311, 314-317, 96 S.Ct. 2562. "That the State chooses not to determine fitness more precisely through individualized testing after age 50 [does not prove] that the objective of assuring physical fitness is not rationally furthered by a maximum-age limitation." *Id.*, at 316, 96 S.Ct. 2562. In *Bradley*, we considered an equal protection challenge to a federal statute requiring Foreign Service officers to retire at age 60. We explained: "If increasing age brings with it

> increasing susceptibility to physical difficulties, ... the fact that individual Foreign Service employees may be able to perform past age 60 does not invalidate [the statute] any more than did the similar truth undercut compulsory retirement at age 50 for uniformed state police in *Murgia*." 440 U.S., at 108, 99 S.Ct. 939. Finally, in *Gregory*, we upheld a provision of the Missouri Constitution that required judges to retire at age 70. Noting that the Missouri provision was based on a generalization about the effect of old age on the ability of individuals to serve as judges, we acknowledged that "[i]t is far from true that all judges suffer significant deterioration in performance at age 70," "[i]t is probably not true that most do," and "[i]t may not be true at all." 501 U.S., at 473, 111 S.Ct. 2395.
>
> Nevertheless, because Missouri's age classification was subject only to rational basis review, we held that the State's reliance on such imperfect generalizations was entirely proper under the Equal Protection Clause. *Ibid.* These decisions thus demonstrate that the constitutionality of state classifications on the basis of age cannot be determined on a person-by-person basis. Our Constitution permits States to draw lines on the basis of age when they have a rational basis for doing so at a class-based level, even if it "is probably not true" that those reasons are valid in the majority of cases. *Kimel*, 528 U.S. at 84-86.

So too here, the constitutionality of Michigan's coordination of benefits provision "cannot be determined on a person-by-person basis," but rather on the basis of whether Michigan had a rational reason for enacting the statute.

Finally, Michigan had addressed another age-related provision in its workers' compensation statute and answered in a way similar to this Court's rulings described immediately above. In *Cruz v. Chevrolet Grey Iron Division of General Motors Corp*, 398 Mich. 117; 247 N.W.2d 764 (1976), Justice Coleman explained:

> We submit that these are matters for the Legislature or contracting parties as the case may be. It is certainly not for this Court to say at what age a general classification should be made or whether one should be made at all.
>
> If the classification falls unfairly upon some individuals, that fact alone does not permit a finding of unconstitutionality. It could well be a matter for legislative consideration, but not for the personal convictions of the seven of us.
>
> Importantly, the need for some orderly process, as opposed to a multitude of individual (and not necessarily fair) judgments of wage-earning capacities is apparent. If we had to project the wages to be anticipated in the future of each individual 65 and over before compensation benefits could be paid for injuries received, we would impose upon all concerned an incredible task and one quite different from projections for those under 25. The Legislature probably considered the difficulty in anticipating on an individual basis the mental, emotional and physical future of those 65 and over as well as projected retirement, productivity and other less apparent concerns having to do with wage-earning capacity. The method employed is grounded in reason. *Cruz*, 398 Mich. at 133-134.

Justice Levin in *Cruz* concurred saying:

> Worker's compensation is social legislation. The benefit program incorporates some concepts developed at common law and by statute to provide a damage remedy for injury or death. In some of its features the program diverges from principles applied in assessing damages in ordinary civil litigation. The departures and innovations aid some workers and their families and disadvantage others. "[T]he drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one." *Massachusetts Board of Retirement v Murgia*, 427 U.S. 307, 314; 96 S.Ct. 2562, 2567; 49 L. Ed. 2d 520, 525 (1976). A classification affecting the amount of benefits is not unconstitutional simply because it is unfamiliar and may appear to be or is less generous than the common law or other statutes. *Cruz*, 398 Mich. at 143.

In sum, there is a rational basis for Michigan's coordination of benefits statute. For that reason, it does not violate the equal protection clause. The fact that an individualized situation is less generous factually speaking to one person than another does not make the statute unconstitutional.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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